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DEPARTMENT FOR DRL (GREG MAGGIO AND STEPHEN MOODY)

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TAGS: [PHUM](#) [KDEM](#) [KJUS](#) [PGOV](#) [KCRM](#) [GT](#)
SUBJECT: GUATEMALAN COURT SETS PRECEDENT WITH FORCED
DISAPPEARANCE CONVICTION

¶1. (SBU) Summary: On August 31, a Chimaltenango court approved Guatemala's first-ever conviction for the crime of forced disappearance. Felipe Cusanero, a military commissioner who acted under military authority, was sentenced to 150 years for the disappearance of six civilians during the internal conflict. The Ambassador and emboffs attended the trial to underscore USG support for human rights. The sentence passed down by the tribunal is not only a major victory for Guatemala's human rights community, but sets an important judicial precedent in the country, possibly paving the way for other such trials in the future. End Summary.

¶2. (U) In a trial that attracted national and international attention, a Guatemalan tribunal on August 31 sentenced Felipe Cusanero Coj to 150 years in prison for his role in the forced disappearances of six members of the Kaqchiquel Mayan indigenous group in the Department of Chimaltenango between 1982 and 1984. Cusanero,s trial marks the first time in Guatemala's history that anyone has been tried and convicted for the crime of forced disappearance) according to some estimates, as many as 45,000 Guatemalans were forcibly disappeared during the 1960-1996 armed internal conflict.

¶3. (U) During the peak period of the conflict in the early 1980s, the army trained and armed "civil defense patrols" (a community-based, a anti-insurgency auxiliary of the army) and "military commissioners," who essentially acted as individual army informants. The army charged these military commissioners with recruiting local civilians to form part of the civil defense patrols and with providing information and intelligence on other villagers.

¶4. (U) Cusanero,s prosecution got its start in 2003 when family members of the six victims filed a legal complaint before the Attorney General's Office (Public Ministry) alleging that Cusanero was responsible for the forced disappearance of six villagers in the town of Pachalum. Cusanero's defense team subsequently delayed the case through appeals and legal maneuvering until it made its way to the Constitutional Court, which finally gave permission to proceed with the trial in 2008.

¶5. (U) Throughout the proceedings, Cusanero,s lead defense lawyer never disputed that his client was involved in the disappearance of the six victims, but rather argued that his client could not be tried because the crime of "forced disappearance" has only been on the books in Guatemala since ¶1996. Trying Cusanero, he maintained, violated the principle of retroactivity since the six victims disappeared more than twelve years before the law was passed. The Attorney General's Office and the lawyers for the plaintiffs, however, successfully argued that forced disappearance is an ongoing crime until the victim is found, dead or alive.

¶6. (SBU) Comment: The trial was closely monitored by members of Guatemala's human rights community and the foreign diplomatic community. The Ambassador, Human Rights Officer, and USAID FSN attended the courtroom proceedings on two occasions to signal the importance the United States attaches to this ground-breaking trial. In brief remarks outside the courtroom to assembled journalists a couple of days before the sentence was passed, the Ambassador noted that the Embassy was following the case closely, and underlined the importance it held for human rights and justice issues. Guatemala's human rights community hailed Cusanero's subsequent conviction as a major victory in the long struggle to bring to justice those accused of human rights abuses and genocide during the internal conflict. The long sentence passed down by the tribunal also sets an important judicial precedent, and may pave the way for more such trials in the future. End comment.
McFarland